

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

STEPHEN F. COSTELLO,

Plaintiff,

V.

KENNETH R. OXENDINE,
HIGH POINT FURNITURE CARRIER
COMPANY, CARR FREIGHT, INC., and
UNKNOWN EMPLOYER OF
KENNETH R. OXENDINE,

Defendants.

CIVIL NO.: 2:18-cv-00474-JTM-APR

**MOTION OF DEFENDANT, HIGH POINT FURNITURE CARRIER
COMPANY, FOR JUDGMENT ON THE PLEADINGS ON
COUNTS IV AND V OF PLAINTIFF'S COMPLAINT**

The Defendant, High Point Furniture Carrier Company (“High Point”), by counsel, now moves the Court for Judgment on the Pleadings as to Counts IV and V of Plaintiff’s Complaint, and in support thereof, respectfully shows the Court as follows:

1. Count IV of Plaintiff's Complaint alleges a claim against High Point on the basis of alleged negligent hiring, training, supervision and retention of Defendant, Kenneth R. Oxendine ("Oxendine").

2. Count V of Plaintiff's Complaint alleges a claim against High Point on the basis of alleged negligent entrustment of a vehicle to Oxendine.

3. The Plaintiff's Complaint alleges that Oxendine was an employee of High Point, acting within the scope of his employment, at the time of the accident giving rise to Plaintiff's claims. High Point and Oxendine have admitted the truth of this allegation in their Answer.

4. Claims for negligent hiring, training, supervision, retention and entrustment do not lie of the alleged tortfeasor was acting within the scope of his employment at the time of the accident, a fact which has been alleged in Plaintiff's Complaint and admitted by the Defendants.

5. As a result, High Point is entitled to judgment on the pleadings on Counts IV and V of Plaintiff's Complaint, as more fully appears in the supporting brief filed contemporaneously with this Motion.

WHEREFORE, Defendant, High Point Furniture Carrier Company, by counsel, prays for judgment on the pleadings dismissing Counts IV and V of the Plaintiff's Complaint, and for all other appropriate relief.

Respectfully submitted,

s/s Robert F. Parker
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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2019, a copy of the foregoing Answer was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system, which sent copies to the following:

- Gregory J. Sarkisian, email: greg@sarklawfirm.com
- Katherine S. Sarkisian, email: katie@sarklawfirm.com

/s/ Robert F. Parker
Robert F. Parker (6294-45)